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SERVICE DATE - APRIL 8, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 592X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN CLARK COUNTY, IN

Decided: April 7, 2004

By decision and notice of interim trail use or abandonment (NITU) served on October 9, 2001, a 180-day period was authorized for CSX Transportation, Inc. (CSXT), to negotiate an interim trail use/rail banking agreement with the City of Jeffersonville (the City), for a 5.4-mile segment of its Midwest Region railroad line, known as the Louisville Division, Louisville Terminal/Hoosier Subdivision, extending between milepost B-1.3, near Watson, and milepost B-6.7, near Jeffersonville, in Clark County, IN.

On March 26, 2002, CSXT filed a request to extend the negotiation period until September 30, 2002. In a decision served on April 5, 2002, the extension was granted only for the line segment between milepost B-1.3 and milepost B-4.96. Subsequently, an extension was also granted (until September 30, 2002) for the line segment between milepost B-5.52 and milepost B-6.7, in a decision served on April 30, 2002. The negotiating period under the NITU for the line segments between mileposts B-1.3 and B-4.96 and between mileposts B-5.52 and B-6.7 was extended by decisions served on September 23, 2002, March 24, 2003, and September 15, 2003. The latest extension expired on March 30, 2004.

On March 30, 2004, CSXT filed a request for an extension of the NITU negotiating period until August 4, 2004. CSXT states that it has been negotiating with the City and that an extension of the negotiating period is necessary to complete negotiations. CSXT also states that it has been negotiating with the City regarding public use.<sup>1</sup> Additionally, CSXT requests an extension of the consummation notice filing deadline until October 4, 2004.<sup>2</sup>

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<sup>1</sup> The public use condition imposed in the October 9, 2001 decision, which is limited by statute to 180 days, has expired and may not be extended.

<sup>2</sup> Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>3</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997).

Because an extension of the consummation notice filing deadline and of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d), and the rail carrier has indicated its willingness to continue negotiations by requesting an extension, the requested extensions will be granted. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990). Accordingly, the NITU negotiating period will be extended to August 4, 2004, and the consummation notice filing deadline will be extended to October 4, 2004.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request to extend the NITU negotiating period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to August 4, 2004.
3. The authority to abandon must be exercised on or before October 4, 2004.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>3</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).